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IN THE

Supreme Court of the United States

October Term, 1980

WOOD WALKER & CO.,

Petitioner,

MARBURY MANAGEMENT INC., and HARRY BADER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for Respondents in Opposition to Petition for Certiorari.

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WOOD WALKER & CO.,

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v.

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Questions Presented.

The first question as posed by petitioner, namely:

> "Is the common law concept of *respondeat superior* read into the Securities Exchange Act of 1934 and specifically into Sec. 10(b) (15 U.S.C. Sec. 78j[b]) to hold an employer absolutely liable without *scienter* for the acts of its employees?"

may create the erroneous impression that the reversal by the Circuit Court of the dismissal of the complaint as

against petitioner was solely on the ground that the lower court erred in not applying the concept of *respondeat superior* and that there was no proof of *scienter.*

The record is to the contrary as the Circuit Court held that on the whole of the evidence presented to the trial court there was not only the applicability of *respondeat superior,* but there were other theories of liability which the lower court incorrectly disregarded. The Circuit Court stated:

> "The way in which the case was tried, and the shift in the emphasis of argument on the motion to dismiss arising from the introduction of Ernst & Ernst into the discussion may explain Judge Gagliardi's taking the position that he had to consider only the aider and abettor analysis, but the record evidence tending to support the plaintiffs' claim on the other two grounds was before the court, *and, on the whole of that evidence, the three theories of liability—aider and abettor, controlling person, and respondeat superior—equally presented themselves for resolution"* (A13). (Emphasis added.)

Moreover, and as also pointed out in the Circuit Court's prevailing opinion, there were erroneous rulings by the trial court on the admission of material evidence and in the evaluation thereof as more fully referred to below.

The formulation of petitioner's second question is not apropos:

> "If a collateral misstatement is made prior to the purchase of a security at its fair market value and

> the security thereafter declines in price solely due to market forces, are damages for such decline recoverable by the purchaser?''

The uncontradicted testimony on that subject establishes that the false representations were made by petitioner's employee Kohn on which respondents relied to their damage.

Examples of these misrepresentations are set forth below.

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Statement of the Case.

In its "Statement of the Case," petitioner alleges that Marbury and Bader (plaintiffs below) opened accounts with Wood Walker & Co. in the summer of 1968 and that *subsequently* and in September of that year the "personal friend" of respondents joined Wood Walker as a "registered representative-trainee," and that "* * * plaintiffs 'apparently' dealt 'principally' " with Alfred Kohn in their buying of stock at Wood Walker.

This is a distorted and misleading version of the record. Actually, all sales were made by Kohn through Wood Walker commencing the summer of 1968 before Kohn was officially hired and Kohn given credit by Wood Walker for a share of the commissions.

Concerning the Parties and the Trial.

This was a non-jury case and neither petitioner, Wood Walker, nor Kohn, the co-defendant, submitted any proof, documentary or otherwise, but, instead, rested at the close of respondents' case, then moved to dismiss the complaint, and plaintiff cross-moved for judgment. Accordingly, the record consists solely of the testimony and evidence of respondents and documentary proof submitted by them.

The causes of action by Jaffe (a third plaintiff) were dismissed for failure of proof.

Petitioner's motion to dismiss was granted as against the respondents and plaintiff's cross-motion granted only to the extent of directing judgment against the defendant Kohn.

Prior to trial, the complaint* was dismissed against the New York Stock Exchange, one of the original defendants.

Concerning the Testimony and Exhibits.

The first witness, Robert Gold, president of Marbury Management Inc., testified that he became acquainted with the defendant Alfred Kohn when they were vacationing at a summer resort in Spring Valley, New York, known as Baders, owned and operated by the plaintiff Harry Bader, who also met Kohn in that fashion.

At the time they met Kohn, Marbury and Bader had stock brokerage accounts with brokers other than Wood Walker, and Mr. Gold testified that there had been no reason to deal with Wood Walker, rather than his then brokerage firm or to make the purchase from Wood Walker in its Bronx office and through Mr. Kohn but he was persuaded to do so "based on the information that he gave to us" (TT pp. 51a, l. 19-52a, l. 8).

Kohn claimed to be a stock broker connected with Wood Walker, and separately gave Gold and Bader his business card.** On one side of the card in large type was the name of Al Kohn—under that "Security Analyst" and

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A copy of the complaint is set forth in respondents' appendix. Such dismissal was at the time of the substitution of present counsel for respondents. In dismissing the complaint against the Stock Exchange, the court stated that, even if the Exchange was derelict for not making any punitive action against petitioner, " * * it would not give rise to any liability since no action taken at that time would have prevented plaintiffs' losses. The Exchange investigation continued until at least April 29, 1969 when Kohn was interrogated by the Exchange (the transcript of which is annexed to the Exchange affidavit) and the last transaction complained of by plaintiffs occurred on March 26, 1969."

**Each separate portion of the card marked at the trial as Exhibits 47 and 48, but in the Circuit Court, Appendix of Exs. as 1E and 2E.

on the bottom, "Wood Walker & Co.," its Bronx office address and telephone number.

The other side of this two-fold card stated in large type "Portfolio Management Specialist" and beneath that "Wood Walker & Co." and again, its Bronx office address and telephone number.*

In August, 1968, Kohn telephoned Gold urging that he purchase shares of DWG Corp. stating that he was familiar with the company and had met with its financial officer, that it was a small conglomerate and was in the process of making a number of acquisitions and this would cause the market price of its shares to go up. Although this purchase was made before Kohn was officially employed by Wood Walker, nevertheless, as above stated, Marbury received a confirmation of the sale from Wood Walker, the same as a subsequent purchase from Kohn.

All orders for purchases resulted from Kohn's representations and recommendations. At no time was there any discussion of the transactions with anyone else at Wood Walker other than Kohn (TT pp. 50, 51).

Thus, petitioner's statement that Marbury "dealt principally" with Alfred Kohn in their buying of stock at Wood Walker is misleading. All dealings and purchases were only with Kohn.

Kohn was so positive that by reason of his private information that the price of DWG stock would go up that he personally guaranteed payment of losses, if any.

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*On his examination before trial, Kohn testified that these cards were supplied by Wood Walker without any cost to him.

No acquisitions were made by DWG as represented by Kohn and the market price continued to go down.

The next stock recommended by Kohn was Unexcelled, which Kohn falsely represented was in the process of a "big merger."

Kohn went so far as to tell Gold that, on the Unexcelled purchase, no money need be paid—that "it is going up immediately, * * * you could buy and sell it within two weeks and just keep the profits" and "I do it all the time and Wood Walker does it all the time" (TT p. 19, ll. 20-25).

Likewise with all the stocks purchased by Marbury, none of Kohn's representations were true and "the items never transpired that he said were going to happen" (TT p. 50, ll. 4-7).

The next purchase was on December 6, 1968, of 100 shares of Responsive Environment. Mr. Kohn told Mr. Gold that he had "* * * a relative of his who was either friendly or connected with the company * * * and that a very favorable article was coming out in the New York Times which would cause the stock to go up in fact" and recommended that the stock be purchased.

There was no article which appeared in the New York Times but, instead, an advertisement from a brokerage house, and the stock went down in price (TT p. 18, ll. 5-15).

The next purchase was of Universal Container. Mr. Gold testified that Mr. Kohn:

> "told me he had certain inside information with respect to that company; that they were going to acquire certain casinos as in the Catskill Mountains and also in Europe, which should cause the stocks

to go up considerably. None of these events ever took place" (TT p. 20, ll. 10-16; p. 53a Appendix U. S. Court of Appeals).

After testifying to the losses incurred, the record indicates the following:

"The Court: If you had not received advice from Mr. Kohn with respect to the stocks, you would not have purchased them?

"Is that the question?

"The Witness: I never heard of these companies. I never would have purchased the stock.

"Q. Would you have purchased the stock from Wood Walker had you known that Mr. Kohn was not a registered representative? A. No, I wouldn't have purchased them" (TT p. 24, ll. 3-12).

Mr. Bader testified in a similar fashion of the fraudulent misrepresentations made by Kohn. The same as Gold, he had an account with another brokerage firm and would not have made purchases from Wood Walker through Kohn, if not for the representations.

The New York Stock Exchange made an investigation of the operations of Wood Walker & Co. and found that its rules were violated in that Kohn, only a trainee and not a licensed representative, gave advice to customers and took orders for the purchase and sale of stock on behalf of Wood Walker, who not only issued confirmations and statements to customers, but also credited Kohn with a percentage of the commissions on his sales including those to respondents.

In dismissing the complaint against the Stock Exchange, the court noted that at the time of the transactions Kohn had a pending application for license but no license was ever issued.

Erroneous Rulings by Trial Court.

A. On July 19, 1977, on the argument of petitioner's motion to dismiss at the close of plaintiff's case, the court stated:

> "It is undisputed that Alfred Kohn was employed by the defendant Wood Walker & Company. I find that he was employed as a trainee and accepting the plaintiffs' facts in their most favorable light, as I must do on a motion of this kind. I think the evidence in its most favorable light to the plaintiffs is that during the course of his employment with Wood Walker & Company the defendant Alfred Kohn did solicit business from the three plaintiffs here *and made various representations to each of the plaintiffs with respect to each of the issues which they purchased* as set forth in Schedules A, B and C annexed to the complaint" (TT p. 222a). (Emphasis added.)

Notwithstanding this finding in 1977 of "representations," by Kohn, thereafter, in the Court's subsequent opinion, dated April 25, 1979, the Court then characterized the statements of Kohn as "predictions" and not as "representations."

B. Although the Court had previously correctly ruled that on a motion to dismiss at the close of plaintiff's case, plaintiff's evidence must be accepted in the most favorable light, nevertheless, thereafter, in granting petitioner's motion to dismiss, the Court applied a more rigid rule stating:

> "I find, however, that the plaintiffs have not sustained the burden of proof by a fair preponderance of the credible evidence * * *" (TT p. 223a).

As judgment was directed against Kohn and affirmed by the Court of Appeals, the question of whether Kohn's statements were representations or predictions were moot as against Kohn. However, as against petitioner, the Court's earlier ruling that the statements by Kohn were "representations" should be considered as the "Law of the Case" in determining the liability of petitioner as Kohn's employer.

C. The trial court erred in ruling that Wood Walker did not supply or pay for Kohn's business cards. The court stated:

> "The court also found that Wood Walker neither supplied nor paid for Kohn's business cards. Wood Walker thus did not in any way provide substantial assistance to Kohn in violating the securities law" (TT pp. 182-3).

This finding is contrary to the record. The defendant, Kohn, had testified on his examination before trial that Wood Walker had printed and paid for them.

Mr. Haneman, a partner of Wood Walker, subpoenaed by the respondent as an adverse witness, and when asked about Kohn's testimony that the cards were paid for and furnished by Wood Walker Mr. Haneman testified:

> "I wouldn't have any way of knowing it. They are not standard cards of Wood Walker. They are prints. To my knowledge we have never had anything like that."

When this subject was pursued, the interrogation on that subject concluded as follows:

> "In view of that testimony by Mr. Kohn under oath, would you tell us now whether or not Wood

> Walker printed, paid for and handed these cards over to Mr. Kohn, Exhibits 47 and 48? A. No, sir, I can't even say any more than I did before.
>
> "Q. Would you deny it? A. I certainly would not. I have no knowledge of it. I have never seen them before."

Thus, the only positive evidence in the record concerning the business cards was that they were paid for and supplied by Wood Walker.

Petitioner was thus joined with Kohn, not only as an employer and thus a controlling person, but also as an aider and abettor.

D. The Court erred in excluding Exhibits 52 and 53. Exhibit 52 consisted of the correspondence between Mr. Haneman, a partner of Wood Walker, and the New York Stock Exchange, which summarized the investigation of the Exchange and referred to the improper activities of Kohn as a trainee, in dealing with customers, giving advice, making sales, improperly performing duties as a registered representative and the recipient of a drawing account for a portion of the brokerage commissions.

Exhibit 53 was a certified copy of the transcript of the investigation by the New York Stock Exchange of Wood Walker, including testimony of the defendant Kohn.

At one point, petitioner's counsel stated he had no objection to the introduction of said report (TT p. 91a).

When again request was made to introduce this exhibit, during the course of the colloquy that ensued, petitioner's counsel stated:

> "* * * it was being offered as part of the plaintiffs' case and obviously, if the Court chooses to take it as an exhibit, it may" (TT p. 217, ll. 17-19).

However, the Court did not accept this concession and stated to Mr. Crocco:

> "The Court: No, you objected" (TT p. 217, l. 20).

Although Mr. Crocco remained silent and had not voiced any objection, nevertheless, the Court stated:

> "I would say that the objection is well taken and I have to sustain the objection" (TT p. 217, l. 23).

In requesting the Court to reconsider its exclusion of Exhibit 53, respondents' counsel cited the case of *U. S. v. Solomon,* 519 Fed. 2d 863.

Although the Court acknowledged that

> "* * * any statement of any defendant can be admitted" (TT p. 184a).

nevertheless, and although Exhibit 53 contained the statement of the defendant Kohn, the Court ruled that the *Solomon* case was not apropos as that was a criminal case.

This ruling was erroneous as the rules of evidence are less restrictive in a nonjury civil case, as this one, than in a contested criminal jury trial.

E. The Court overlooked the undisputed and material fact that petitioner improperly maintained a ledger card under a number assigned to Kohn, in the same way as it did with registered representatives, on which Kohn was credited with a share of the commissions on the sales made by him on behalf of petitioner including sales to respondents. This ledger card was in evidence (Exhibit 56).

F. At the close of respondents' case their counsel moved to conform the pleadings to the proof but this was limited by the questioning of the court, to the amounts set forth in the schedules (TT pp. 183, 18a).

The court ruled that respondents' claim was limited to 10b-5. Respondents' counsel disputed such limitation as follows:

> "Mr. Berkowitz: I don't think this is limited to 10b-5, Your Honor. Your Honor has a right, as a matter of simple justice here to find we may have a case also in negligence and deriliction by Wood, Walker because of Kohn. That could be even at this late stage, as Your Honor well knows, a ruling based upon any theory at all which might be applicable, which might result in recovery.
>
> "The Court: You are in Federal Court now, you have several claims. That is all I can consider."*

Such ruling, as well as the Court's failure to liberally construe plaintiffs' case on defendant's motion to dismiss,

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In granting the motion for judgment against Kohn, the court recognized that the complaint alleged " * * violations of Section 10(b) of the Securities Exchange Act of 1934 ('Exchange Act'), 15 U.S.C. S. 78b, Section 17(a) of the Securities Act of 1933, 15 U.S.C. S. 77q, and common law fraud" (TT 295a).

As stated by the Court of Appeals (A14):

> "Generally a complaint that gives full notice of the circumstances giving rise to the plaintiff's claim for relief need not also correctly plead the legal theory or theories and statutory basis supporting the claim. *Rohler v. TRW, Inc.*, 576 F. 2d 1260, 1264 (7th Cir. 1978); *Hostrop v. Board of Junior College District No. 515*, 523 F. 2d 569, 581 (8th Cir. 1975), cert. denied 425 U. S. 963 (1976); *Bramlet v. White Star Ltd.*, 221 F. 2d 189, 196 (2d Cir. 1955); cf. *New York State Waterways Assn. v. Diamond*, 469 F. 2d 419, 421 (2d Cir. 1972) (court's duty to read pleading liberally to determine whether facts alleged justify taking jurisdiction on grounds other than those most artistically pleaded).

was in violation of the Federal Rules of Evidence, Article 1, Sec. 102, which provides that there should be liberal construction for "truth and justice."

G. The trial court erred in its failure to take cognizance of the undisputed evidence that petitioner, as the employer of Kohn, was responsible for his acts in the performance of his services and in permitting him to give advice and take orders for the purchase and sale of stocks and conduct business for petitioner in its usual course of business, in issuing its confirmations to respondents for such transactions and sharing its commissions with Kohn, petitioner was liable not only under the controlling person relationship, but also, as principal of its agent Kohn for his malfeasance, as well as under the *respondeat superior* doctrine. Moreover, petitioner was in a fiduciary position on behalf of respondents and thus under a duty of a higher degree of care.*

Reasons for Denying the Writ.

1.

Petitioner has not exhausted its remedies. Although the decision by the Court of Appeals affirmed the judgment against the defendant Kohn, and that is final, the judgment in favor of petitioner was reversed and a new trial granted of the claims of respondents against petitioner. Accordingly, a review by this Court would be academic and would become moot if after a new trial, the lower court makes a determination in favor of petitioner.

2.

The two questions presented for review by petitioner are not apropos. The reversal by the Court of Appeals was on

*See Law Review article, "Brokers' Derivative Liability: Does Supervision Make a Difference?" (Brooklyn Law Review, Vol. 41, No. 2 1974).

the basis of the errors of the trial court in failing to consider not only liability under Section 10(b) U.S.C., Section 78j(b), but also for the failure to consider a theory of liability other than *respondeat superior,* namely, aider and abettor and controlling person.

Additionally, the reversal was based on erroneous rulings of the trial court on evidence and a motion to conform the pleadings to the proof. Errors of the trial court are hereinabove more particularly referred to under the heading of "Erroneous Rulings by the Trial Court."

3.

Petitioner's main argument is that the petition should be granted because of the conflict of the circuits as to whether *respondeat superior* can be a basis for liability under Section 10(b).

However, such a conflict is academic in this case, as petitioner thus overlooks the ruling of the Circuit Court that it was error for the District Court to not consider liability as an aider and abettor and controlling person.

In effect, petitioner is urging that respondents be restricted to a claim under 10(b) and thus glosses over FRCP 15(b) that issues tried by implied consent are to be treated as if raised in the pleadings.

Moreover, the allegations of the complaint were sufficient to impose liability on grounds other than 10(b).

As stated by the Circuit Court (Appendix A12-13):

> "* * * the evidence upon which plaintiffs rely in this court, as in the district court, and the allegations of fact made in the complaint are alike completely descriptive of the transactions and of the

> roles of the actors in them, and they are the evidence and allegations relevant to a determination of the *respondeat superior* issue, and, inevitably, of the Section 20(a) issue. Plaintiff's counsel argued the *respondeat superior* issue orally at the trial, and the bare failure to reiterate it in the closing brief in the district court cannot be considered an abandonment of the point."

Presumably, petitioner is urging that no other section of the securities laws should be applied. This would violate the Federal Rules of Evidence which require liberal construction for "truth" and "justice." The proof submitted supports a finding for respondents on all the theories referred to by the Circuit Court.

4.

The securities laws were designed to complement common law liability—not to restrict liability. The '33 and '34 Acts themselves evidence this purpose. Each contains a savings clause which preserves all rights and remedies existing at law or in equity. The liberal and flexible construction of the securities laws mandated by their broad, remedial purposes, disallows a narrow interpretation which would foreclose a claimant from relief unless and only if he pursues his claim under a particular and specified section of the securities laws, so that form take precedence over substance.

In *J. I. Case v. Borah,* this Court stated that the District Courts have broad remedial powers to "adjust their remedies so as to grant the relief necessary." 377 U. S. 426 (1963).

This case has been pending since August, 1973, and it would be unjust to further defer a final determination of

respondents' lawsuit and subject them to further expense and inconvenience.

Except for the measure of damages, the cases cited by petitioner are all on the subject of Section 10(b)5. As the reversal was based on other grounds, there is no point in distinguishing these cases from the case at bar. However, the citation at page 14 of *Hayden, et al., v. Walston & Co., Inc., et al.,* with the flat statement that

> "The facts and the issue are as identical as two cases can be."

requires a response.

In the *Hayden* case, plaintiff's sole complaint was that after the purchase of stock selected by plaintiff, without the advice or representation of defendant's representative, and the stocks went down in price, it was then learned that the salesman was not a registered representative and suit instituted.

The lack of license or registration played no part in plaintiff's selection of the stocks that were purchased by Hayden and whether the stocks went up or down in price was the risk taken by plaintiff of his own volition.

Also, and as stated by the Circuit Court (A10):

> "The second ground of suit rejected in the Hayden case, that a private right of action could be predicated on the violation of the National Association of Securities Dealers rules, has not been relied upon in this case, and was not a ground of decision in the district court."

In our case, the respondents were lured away from the brokerage firms with which they were then dealing, by the

representations of Kohn not only that he was a broker with petitioner's firm, but also that he was a "securities analyst" and a "porfolio management specialist," that he had inside information and also made representations of factual information which would cause his recommended stocks to go up in price, and on all of the foregoing respondents purchased said stock from petitioner, through its employee Kohn. The representations were false and respondents suffered substantial losses.

In fact, with one stock, Kohn was so positive of his alleged inside information that the price would immediately go up, he stated that there was no need to make any payment on the purchase of the stock as it could be sold at a higher price very quickly before payment of the purchase price would be required.

The *Hayden* case is completely different and we agree with petitioner that if in our case the facts were the same as in the *Hayden* case, there would be no liability.

Petitioner argues that scienter must be established in support of a 10(b) action and states that the Second Circuit in this case

> "* * * held that the brokerage house is liable without intent."

We respectfully differ and the opinion speaks for itself.

In any event there was substantial unrebutted proof that petitioner, as the employer, placed Kohn in a position in which he improperly, within the scope of his apparent authority, and in the name of petitioner, at its brokerage office and over its telephone, not only made sales of stocks to respondents but also made representations of so-called inside information, etc. More than that, in violation of the

regulations of the N. Y. Stock Exchange, petitioner shared its commissions with Kohn, a trainee without the required license. That certainly establishes intent.

It is significant that on the subject of intent, petitioner did not attempt to establish a good faith defense and based upon the record, it would have been impossible to do so.

Petitioner states at page 4:

> "Nonetheless, the court below held that an entity whose only involvement was that it was the wrongdoer's employer has no defense and is absolutely liable for any wrongdoing."

This statement is not supported by the record.

CONCLUSION.

Respondents respectfully submit that the petition should be denied.

Dated: October 22, 1980

Respectfully submitted,

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APPENDIX.

Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MARBURY MANAGEMENT, Inc., HARRY BADER and HARVEY JAFFE,

Plaintiffs,

against

ALFRED KOHN, WOOD, WALKER & Co., and THE NEW YORK STOCK EXCHANGE,

Defendants.

Plaintiffs, complaining of the defendants, by their attorneys, Hauser & Rosenbaum, P.C., respectfully allege:

JURISDICTION

1. This action is brought under Section 10 B of the Securities Exchange Act of 1934 (15 U.S.C. 78j [b]; Rule 10b5 (17 C.F.R. 240.10b5); Section 17 (a) of the Securities Act of 1933 (15 U.S.C. 77q); and Section 27 of the Securities Exchange Act of 1933 (15 U.S.C. 78aa).

VENUE

2. All defendants in this action reside in the Southern District of New York.

THE PARTIES

3. Plaintiff, Harvey Jaffe ("Jaffe") is an individual residing in the County of Bronx, City and State of New York.

4. Plaintiff, Harry Bader ("Bader") is an individual residing in Spring Valley in the State of New York.

5. Plaintiff, Marbury Management, Inc. ("Marbury") is a corporation existing by and under the laws of the State of New York, and with its principal office in the City and State of New York.

6. Defendant, Alfred Kohn ("Kohn") is an individual residing in the County of Bronx, City and State of New York, and at relevant times herein, was an agent, servant and/or employee of defendant Wood, Walker & Co.

7. Upon information and belief, Wood, Walker & Co., defendant, is a New York corporation with its principal place of business in the City and State of New York. At the times of the actions hereinafter complained of, it was and still is a member of the New York Stock Exchange, American Stock Exchange, dealt in over-the-counter securities, was duly authorized to transact buy and sell orders in connection with securities in all of the above markets.

8. Defendant, New York Stock Exchange, is a National Securities Exchange registered under Section 6 of the Securities Exchange Act of 1934.

9. That beginning in the summer of 1967, defendant Kohn met the officers of plaintiff Marbury and in order to induce the said plaintiff to purchase securities through

him, falsely represented and held himself out to be lawfully licensed registered representative to said plaintiff, and represented to said plaintiff that he was authorized to transact buy and sell orders on behalf of the defendant Wood, Walker & Co.

10. That plaintiff Marbury did, in reliance on the above representation, place orders to buy and sell securities with defendant Wood, Walker & Co., through defendant Kohn, and defendant Wood, Walker & Co. did, in the ordinary course of business, execute all such transactions.

11. The plaintiff Marbury did not deal with Wood, Walker & Co. through anyone other than defendant Kohn, and any instructions or directions in relation to said securities transactions and to the account of plaintiff Marbury were given to Kohn and acted upon by Wood, Walker & Co.

12. That defendant Wood, Walker & Co. knew or should have known that defendant Kohn was not a legally licensed representative, but nevertheless permitted him to hold himself out to the plaintiff Marbury, and others as such and permitted and allowed him to hold himself out as one authorized to transact buy and sell orders on behalf of the defendant Wood, Walker & Co. to the plaintiff Marbury and others.

13. Defendant Wood, Walker & Co. knew or should have known at all times hereinmentioned, that defendant Kohn was not licensed to act as a registered representative; yet, upon information and belief, defendant Wood, Walker & Co. did execute buy and sell orders through the aforesaid stock exchanges for the plaintiff Marbury and others, upon receipt of instructions from defendant Kohn.

14. That the representations by defendant Kohn that he was a duly authorized registered representative were, in

fact, false and untrue and known by him to be false and untrue at the time said representations were made to plaintiff Marbury, and were made for the purpose of inducing this plaintiff and others to buy and sell certain securities through him.

15. Plaintiff Marbury did instruct and order defendant Kohn to purchase and sell certain securities on certain dates as indicated in Schedule "A" attached hereto, in reliance on his misrepresentations.

16. That on certain dates, certain stocks were purchased through the defendant Wood, Walker & Co. (see Schedule "A") in reliance upon the defendant Kohn's relating to plaintiff Marbury, and others, information about said securities as to their worthiness, value, and investment potential, the said securities were purchased upon reliance by the plaintiff Marbury and others on the representation that the defendant Kohn was a lawfully licensed registered representative.

17. Defendant Kohn made such representations and, in fact, knew they were false and made them with the intent to deceive and defraud the plaintiff Marbury, and others, and to induce plaintiff Marbury, and others to purchase the said securities and pay the sums of money therefor. Defendant Wood, Walker & Co., at the time the defendant Kohn made such false representations, knew said representations were false and fraudulently executed buy and sell orders in behalf of the plaintiff and others with full knowledge that the defendant Kohn was not a lawfully licensed registered representative and did retain for its profit and gain the commissions charged the plaitniff, and others, in connection with said transaction.

18. Defendant Kohn, in addition to representing himself to be a lawfully licensed representative, also advised the plaintiff Marbury and others, that he had personal knowledge of the investment potential of stocks

traded in the over-the-counter market and on the American Stock Exchange, respectively known as D.W.G. Corporation, Responsive Environment Corp. (over-the-counter), Universal Container and Unexcelled, Inc. (American Stock Exchange); and his opinion of the investment potential of these aforesaid stocks, was based upon personal conversations and meetings with officers and other persons who had unique information as to the transactions of the corporations and their effect on the market price of the aforesaid stocks.

19. Upon information and belief, at the time these representations were made, the said representations were false and, in fact, the defendant Kohn had no unique or special information of the investment potential of said corporations which would lead to an increase in the market price of said stocks.

20. Defendant Kohn, at the time of the making of said representations, knew that they were false and that he made said representations with the intent to deceive the plaintiff Marbury, and others, and to induce it to purchase the aforesaid stocks, through his firm, the defendant Wood, Walker & Co.

21. Defendants' said actions, omissions and misrepresentations constitute a violation of Rule 10b5 of the Securities and Exchange Commission (17 C.F.R. 240.10b5) and Section 10b of the Securities Exchange Act of 1934 (15 U.S.C. 78; [b]), in that they constituted the employment of a device, scheme and artifice to defraud, by the making of untrue statements of material facts, and the failure to state certain material facts, so the statements made would not be misleading and constituted acts and practices in a course of business operating as a fraud upon the plaintiff Marbury, and others.

22. Said acts, misrepresentations and omissions took place in connection with the purchase and sale of securities and operated in part through the mails, through regulated stock exchanges and other instruments of interstate commerce.

23. That plaintiff was ignorant of the falsity of the representations of the defendant Kohn, and that the defendant Kohn was not a legally licensed representative, but believed the representations to be true and relied upon the said statements and representations made to it by the defendant, as aforesaid, including his representations as to special knowledge in relation to the securities which he induced plaintiff Marbury to purchase.

24. Plaintiff was induced to and did purchase securities in the sum of approximately Fifty Three Thousand ($53,000.00) Dollars in reliance on the abovementioned representations. Plaintiff Marbury sold certain of the said securities suffering losses on said securities in the sum of Eight Thousand Eight Hundred Ninety Two Dollars and Seventy Seven Cents ($8,892.77); plaintiff Marbury still owns certain securities purchased in reliance on the statements of the defendant Kohn, and on these had losses of Twenty Four Thousand Nine Hundred and Thirty Five ($24,635.00) Dollars (losses are detailed in the attached Schedule "A").

25. By virtue of the defendants' abovementioned wrongdoings, plaintiff Marbury has been damaged in the amount of Thirty Three Thousand Eight Hundred Twenty Seven Dollars and Seventy Seven Cents ($33,527.77), together with interest thereon from March 30, 1969.

COUNT II

26. Plaintiff repeats, reiterates and realleges Paragraphs numbered "9" through "20" and "22" and "23" of County I, as if therein set forth at length.

27. Defendants' said actions, omissions and misrepresentations constitute a violation of Section 17a of the Securities Act of 1933 (15 U.S.C. 77q).

28. By virtue of the defendants wrongdoing, abovementioned, plaintiff Marbury has been damaged in the amount of Thirty Three Thousand Eight Hundred Twenty Seven Dollars and Seventy Seven Cents ($33,827.77) together with interest thereon from March 30, 1969.

COUNT III

29. Plaintiffs repeat, reiterate and reallege each and every one of the allegations contained in Paragraphs "9" through "20" and "23" of Count I of this complaint, as if herein fully set forth.

30. The facts above stated also constitute actionable fraud under the laws of the State of New York. That based on the fraudulent acts above mentioned, plaintiff Marbury did make the following purchases of security: 1,000 shares of D.W.G. Corporation purchased on August 27, 1968 for approximately Fourteen Thousand Seven Hundred Fifty ($14,750.00) Dollars; 100 shares of Responsive Environments purchased on December 6, 1968 for approximately Three Thousand Three Hundred Eighty Five ($3,385.00) Dollars; 500 shares of Unexcelled, Inc. purchased on January 20, 1969 for a price of Twenty Two Thousand Two Hundred Five ($22,205.00) Dollars; 500 shares of Universal Container purchased on or about the 26th day of March, 1969 for a price of Twelve Thousand Four Hundred Six Dollars and Twenty Five Cents ($12,406.25).

31. That losses were suffered on each of these purchases of securities, as follows: the shares of D.W.G. Corporation purchased for $14,750.00 have current value of $3,000.00 for a loss of $11,750.00; the 100 shares of Responsive Environment purchased for $3,385.75 have a current value of $200.00 for a loss of $3,185.00; the 500 shares of Unexcelled, Inc. purchased for $22,205.00 were sold on March 26, 1969 for $13,312.23 for a loss of $8,892.77; the 500 shares of Universal Container bought on March 26, 1969 have a current value of approximately $2,700.00 for a loss of $9,700.00.

32. All of the above losses were sustained as a result of the fraudulent acts of the defendant, resulting in a loss to plaintiff in the amount of Thirty Three Thousand Eight Hundred Twenty Seven Dollars and Seventy Seven Cents ($33,527.77), together with interest thereon from March 30, 1969.

COUNT IV

33. Plaintiff repeats, reiterates and realleges Paragraphs numbered "9" through "20", "22", "23", "24" as if herein set forth at length.

34. Defendant New York Stock Exchange failed, neglected and refused to fulfill its obligations under Sections 6(a) (1) and 6 (d) of the Securities Exchange Act of 1934 to enforce compliance by its members with The Act and Rules promolgated thereunder and to supervise the activities of such members.

35. By virtue of the defendant New York Stock Exchange's wrongdoings abovementioned, plaintiff Marbury, has been damaged in the amount of Thirty Three Thousand Eight Hundred Twenty Seven Dollars and Seventy Seven Cents ($33,527.77) together with interest thereon from March 30, 1969.

COUNT V

36. That beginning in the summer of 1967, defendant Kohn met plaintiff Bader, and in order to induce the said plaintiff to purchase securities through him, falsely represented and held himself out to be a lawfully licensed registered representative, to said plaintiff, and represented to said plaintiff that he was authorized to transact buy and sell orders on behalf of the defendant, Wood, Walker & Co.

37. That plaintiff Bader did, in reliance on the above representations, place orders to buy and sell securities with defendant Wood, Walker & Co., through defendant Kohn, and defendant Wood, Walker & Co. did, in the ordinary course of business, execute all such transactions.

38. That plaintiff Bader did not deal with Wood, Walker & Co. through anyone other than defendant Kohn, and any instructions or directions in relation to said securities transactions and to the account of plantiff Bader were given to Kohn and acted upon by Wood, Walker & Co.

39. Defendant Wood, Walker & Co., knew or should have known that defendant Kohn was not a legally licensed representative, but nevertheless permitted him to hold himself out to the plaintiff Bader and others as such and permitted and allowed him to hold himself out as one authorized to transact buy and sell orders on behalf of the defendant Wood, Walker & Co. to the plaintiff Bader and others.

40. Defendant Wood, Walker & Co. knew or should have known at all times hereinmentioned that defendant Kohn was not licensed to act as a registered representative; yet upon information and belief, defendant Wood,

Walker & Co. did execute buy and sell orders through the aforesaid stock exchanges for the plaintiff Bader, and others, upon receipt of instructions from defendant Kohn.

41. That the representations by defendant Kohn that he was a duly authorized registered representative were, in fact, false and untrue and known by him to be false and untrue at the time said representations were made to plaintiff Bader and were made for the purpose of inducing this plaintiff, and others, to buy and sell certain securities through him.

42. Plaintiff Bader did instruct and order defendant Kohn to purchase and sell certain securities on certain dates as indicated in Schedule "B" attached hereto, in reliance on his misrepresentations.

43. That on certain dates, certain stocks were purchased through the defendant Wood, Walker & Co. (see Schedule "B") in reliance upon the defendant Kohn's relating to plaintiff Bader, and others, information about said securities as to their worthiness, value, and investment potential: the said securities were purchased upon reliance by the plaintiff Bader, and others, on the representation that the defendant Kohn was a lawfully licensed registered representative.

44. Defendant Kohn made such representations and, in fact, knew they were false and made them with the intent to deceive and defraud the plaintiff Bader, and others, and to induce plaintiff Bader, and others, to purchase the said securities and pay the sums of money therefor; and defendant Wood, Walker & Co. at the time the defendant Kohn made such false representations knew said representations were false and fraudulently executed buy and sell orders in behalf of the plaintiff and others with full knowledge that the defendant Kohn was not a lawfully

licensed registered representative, and did retain for its profit and gain the commissions charged the plaintiff and others in connection with said transaction.

45. Defendant Kohn in addition to representing himself to be a lawfully licensed representative also advised the plaintiff, Bader, and others, that he had personal knowledge of the investment potential of stocks traded in the over-the-counter market respectfully known as Commuter Airlines, Responsive Environment Corp., Capitol Holding and Stranrock Uranium; and his opinion the investment potential of these aforesaid stocks was based upon personal conversations and meetings with officers and other persons who had unique information as to the transactions of the corporations and their effect on the market price of the aforesaid stocks.

46. Upon information and belief at the time these representations were made, the said representations were false and, in fact, the defendant Kohn had no unique or special information of the investment potential of said corporations which would lead to an increase in the market price of said stocks.

47. Defendant Kohn at the time of the making of said representations, knew that they were false and that he made said representations with the intent to deceive the plaintiff Bader, and others, to induce it to purchase the aforesaid stocks, through his firm, the defendant Wood, Walker & Co.

48. Defendants' said actions, omissions and misrepresentations constitute a violation of Rule 10b5 of the Securities and Exchange Commission (17 C.F.R. 240.10b5) and Section 10b of the Securities Exchange Act of 1934 (15 U.S.C. 78[b]), in that they constituted the employment of a device, scheme and artifice to defraud, by the making of

untrue statements of material facts, and the failure to state certain material facts, so the statements made would not be misleading and constituted acts, practices in a course of business operating as a fraud upon the plaintiff Bader, and others.

49. Said acts, misrepresentations and omissions took place in connection with the purchase and sale of securities and operated in part through the mails, through regulated stock exchanges, and other instruments of interstate commerce.

50. That plaintiff was ignorant of the falsity of the representations of the defendant Kohn and that the defendant, Kohn, was not a legally licensed representative, but believed the representations to be true and relied upon the statements and representations made to it by the defendant as aforesaid including his representations as to special knowledge in relation to the securities which he induced plaintiff Bader to purchase.

51. Plaintiff was induced to and did purchase securities in the sum of approximately $24,902.25 in reliance on the above-mentioned representations. Plaintiff Bader still owns the securities purchased in reliance on the statements of the defendant Kohn and on these had losses (which are detailed in the attached Schedule "B").

52. By virtue of the defendants' above mentioned wrongdoings, plaintiff Bader has been damaged in the amount of $24,642.25, together with interest thereon from March 30, 1969.

COUNT VI

53. Plaintiff repeats, reiterates and realleges Paragraphs numbered "36" through "47" and "49" through "51" of Count V as if herein set forth at length.

54. Defendants' said actions, omissions and misrepresentations constitute a violation of Section 17a of the Securities Act of 1933 (15 U.S.C. 77q).

55. By virtue of the defendants' wrongdoings, abovementioned, plaintiff Bader has been damaged in the amount of $24,642.25, together with interest thereon from March 30, 1969.

COUNT VII

56. Plaintiff repeats, reiterates and realleges each and every one of the allegations contained in Paragraphs numbered "36" through "47" and "50" of Count V of this complaint, as if herein fully set forth.

57. The facts above stated also constitute actionable fraud under the laws of the State of New York. That based on the fraudulent acts above mentioned, plaintiff Bader did make the following purchases of security: 100 shares of Capital Holding purchased on December 27, 1968 for $687.50; 500 shares of Responsive Environments purchased on December 13, 1968 for $16,928.75; 500 shares of Commuter Airlines purchased on September 27, 1968 for a price of $6,312.50 and 200 shares of Stranrock Uranium purchased on or about the 6th day of January, 1969 for a price of $973.50.

58. That losses were suffered on each of these purchases of securities as follows: the 100 shares of Capital Holding purchased for $587.50 have a current value of approximately $00.00 for a loss of $687.50; the 500 shares of Responsive Environment purchased for $16,928.75 have a current value of approximately $200.00 for a loss of $16,728.75; the 500 shares of Commuter Airlines purchased for $6,312.50 have a current value of $00.00 for a loss of $6,312.50; the 200 shares of Stanrock Uranium bought for $973.50 have a current value of approximately $60.00 for a loss of $913.50.

59. All of the above losses were sustained as a result of the fraudulent acts of the defendant, resulting in a loss to plaintiff in the amount of $24,642.25, together with interest thereon from March 30, 1969.

COUNT VIII

60. Plaintiff repeats, reiterates and realleges Paragraphs numbered "36" through "47", "50", "51" and "52" as if herein set forth at length.

61. Defendant New York Stock Exchange failed, neglected and refused to fulfill its obligations under Sections 6 (a) (1)and 6 (d) of the Securities Exchange Act of 1934 to enforce compliance by its members with the Act and Rules promulgated thereunder and to supervise the activities of such members.

62. By virtue of the defendant New York Stock Exchange's wrongdoings abovementioned, plaintiff Bader, has been damaged in the amount of $24,642.25 together with interest thereon from March 30, 1969.

COUNT IX

63. That beginning in the summer of 1967, defendant Kohn met the plaintiff Jaffe, and in order to induce the said plaintiff to purchase securities through him, falsely represented and held himself out to be a lawfully licensed registered representative to said plaintiff, and represented to said plaintiff that he was authorized to transact buy and sell orders on behalf of the defendant Wood, Walker & Co.

64. That plaintiff, Jaffe, did, in reliance on the above representations, place orders to buy and sell securities with defendant Wood, Walker & Co., through defendant

Kohn, and defendant Wood, Walker & Co. did, in the ordinary course of business, execute all such transactions.

65. That plaintiff Jaffe did not deal with Wood, Walker & Co. through anyone other than defendant Kohn, and any instructions or directions in relation to said securities transactions and to the account of plaintiff Jaffe, were given to Kohn and acted upon by Wood, Walker & Co.

66. Defendant Wood, Walker & Co., knew or should have known that defendant Kohn was not a legally licensed representative, but nevertheless permitted him to hold himself out to the plaintiff Jaffe, and others, as such and permitted and allowed him to hold himself out as one authorized to transact buy and sell orders on behalf of the defendant Wood, Walker & Co. to the plaintiff, Jaffe, and others.

67. Defendant Wood, Walker & Co. knew, or should have known, at all times hereinmentioned, that defendant Kohn was not licensed to act as registered representative; yet, upon information and belief, defendant Wood, Walker & Co. did execute buy and sell orders through the aforesaid stock exchanges for the plaintiff Jaffe, and others, upon receipt of instructions from defendant Kohn.

68. That the representations by defendant Kohn that he was a duly authorized registered representative were, in fact, false and untrue and known by him to be false and untrue at the time said representations were made to plaintiff and others, to buy and sell certain securities through him.

69. Plaintiff Jaffe did instruct and order defendant Kohn to purchase and sell certain securities on certain dates as indicated in Schedule "C" attached hereto, in reliance on his misrepresentations.

70. That on certain dates, certain stocks were purchased through the defendant Wood, Walker & Co. (see Schedule "C") in reliance upon the defendant Kohn's relating to plaintiff Jaffe, and others, information about said securities as to their worthiness, value and investment potential, the said securities were purchased upon reliance by the plaintiff Jaffe, and others, that the defendant Kohn was a lawfully licensed registered representative.

71. Defendant Kohn made such representations and, in fact, knew they were false and made them with the intent to deceive and defraud the plaintiff Jaffe, and others, and to induce plaintiff Jaffe, and others, to purchase the said securities and pay the sums of money therefor; and defendant Wood, Walker & Co., at the time the defendant Kohn made such false representations, knew said representations were false and fraudulently executed to buy and sell orders in behalf of the plaintiff, and others, with full knowledge that the defendant Kohn was not a lawfully licensed registered representative, and did retain for its profit and gain the commissions charged the plaintiff and others in connection with said transaction.

72. Defendant Kohn in addition to representing himself to be a lawfully licensed representative, also advised the plaintiff Jaffe, and others, that he had personal knowledge of the investment potential of stocks traded in the over-the-counter market and on the American Stock Exchange, respectfully known as D.W.G. Corporation, Responsive Environment Corp., Universal Container, Commuter Airlines, Automatic Radio and Standard Dredging; and his opinion of the investment potentials of these aforesaid stocks was based upon personal conversations and meetings with officers and other persons who had unique information as to the transactions of the corporations and their effect on the market price of the aforesaid stocks.

73. Upon information and belief at the time representations were made, the said representations were false, and, in fact, the defendant Kohn had no unique or special information of the investment potential of said corporation which would lead to an increase in the market price of said stocks.

74. Defendant, Kohn at the time of the making of said representations, knew that they were false and that he made said representations with the intent to deceive the plaintiff Jaffe, and others, and to induce him to purchase the aforesaid stocks, through defendant Kohn's firm, the defendant Wood, Walker & Co.

75. Defendants' said actions, omissions and misrepresentations constitutes a violation of Rule 10b5 of the Securities Exchange Act of 1934 (15 U.S.C. 78; [b]), in that they constituted the employment of a device, scheme and artifice to defraud, by the making of untrue statements of material facts, and the failure to state certain material facts, so the statements made would not be misleading and constituted acts, practices in a course of business operating as a fraud upon the plaintiff Jaffe, and others.

76. Said acts, misrepresentations and omissions took place in connection with the purchase and sale of securities and operated in part through the mails, through regulated stock exchanges, and other instruments of interstate commerce.

77. That plaintiff was ignorant of the falsity of the representations of the defendant Kohn, and that the defendant Kohn was not a legally licensed representative, but believed the representations to be true and relied upon the said statements and representations made to it by the defendant, as aforesaid, including his representations as to special knowledge in relation to the securities which he induced plaintiff Jaffe to purchase.

78. Plaintiff was induced to and did purchase securities in the sum of approximately $27,964.46 in reliance on the abovementioned representations. Plaintiff Jaffe sold certain of the said securities suffering losses on said securities in the sum of $4,084.25; plaintiff Jaffe still owns certain securities purchased in reliance on the statements of the defendant Kohn, and on these had losses of $7,790.07 (losses are detailed in the attached Schedule "C").

79. By virtue of the defendants' abovementioned wrongdoings, plaintiff Jaffe has been damaged in the amount of $11,874.32, together with interest thereon from March 30, 1969.

COUNT X

80. Plaintiff repeats, reiterates and realleges Paragraphs numbered "63" through "74" and "76" through "78" of Count IX as if herein set forth at length.

81. Defendants' said actions, omissions and misrepresentations constitute a violation of Section 17a of the Securities Act of 1933 (15 U.S.C. 77q).

82. By virtue of the defendants' wrongdoing, abovementioned, plaintiff Jaffe has been damaged in the amount of $11,874.32, together with interest thereon from March 30, 1969.

COUNT XI

83. Plaintiff repeats, reiterates and realleges each and every one of the allegations contained in Paragraphs numbered "63" through "74" and Paragraph "77" of Count IX of this complaint, as if herein fully set forth.

84. The facts above stated also constitute actionable fraud under the laws of the State of New York. That based

on the fraudulent acts abovementioned, plaintiff Jaffe did make the following purchases of security: 500 shares of D.W.G. Corporation, purchased on December 10, 1968 for $5,716.25; 100 shares of Responsive Environments purchased on December 3, 1968 for $3,385.75; 400 shares of Standard Dredging purchased in November, 1968 for a price of $7,514.63; 300 shares of Universal Container purchased on or about the 27th day of February, 1969 for a price of $9,215.07; 300 shares of Automatic Radio purchased on January 7, 1960 for a price of $7,406.07; and 400 shares of Commuter Airlines purchased on July 11, 1969 for a price of $3,941.76.

85. That losses were suffered on each of these purchases of securities as follows: the shares of D.W.G. Corporation purchased for $5,716.25 were sold for $1,803.75 for a loss of $3,912.50; the 100 shares of Responsive Environment purchased for $3,385.75 were sold for $3,209.75, for a loss of $176.00; the 400 shares of Standard Dredging purchased for $7,514.63 were sold on January 23, 1967 and March 12, 1969 for $5,599.86 for a loss of $1,914.77; the 300 shares of Universal Container bought on February 27, 1969 have a current value of approximately $1,425.00 for a loss of $7,790.07; the 400 shares of Commuter Airlines purchased for $3,941.76 were sold for $3,917.00, for a loss of $24.76; and 300 shares of Automatic Radio purchased for $7,406.07 were sold for $7,241.10, for a loss of $164.97.

86. All of the above losses were sustained as a result of the fraudulent acts of the defendant, resulting in a loss to plaintiff in the amount of $11,874.32, together with interest thereon from March 30, 1969.

COUNT XII

87. Plaintiff repeats, reiterates and realleges Paragraphs numbered "63" through "74" and "76", "77", "78" of Count IX as if herein set forth at length.

88. Defendant New York Stock Exchange failed, neglected and refused to fulfill its obligations under Section 6 (a) (1) and 6 (d) of the Securities Exchange Act of 1934 to enforce compliance by its members with the Act and Rules promulgated thereunder and to supervise the activities of such members.

89. By virtue of the defendants' wrongdoings abovementioned, plaintiff Jaffe has been damaged in the amount of $11,874.32, together with interest thereon from March 30, 1969.

WHEREFORE,

1. Plaintiff Marbury demands judgment in the amount of Thirty Three Thousand Eight Hundred Twenty Seven Dollars and Seventy Seven Cents ($33,527.77) on Counts numbered "I" through "IV" of the complaint.

2. Plaintiff Bader demands judgment in the amount of Twenty Four Thousand Six Hunded Forty Two Dollars and Twenty Five Cents ($24,642.25) on Counts numbered "V" through "VIII" of the complaint.

3. Plaintiff Jaffe demands judgment in the amount of Eleven Thousand Eight Hundred Seventy Four Dollars and Thirty Two Cents ($11,874.32) on Counts numbered "IX" through "XII" of the complaint.

4. All of the above with interests and costs.

HAUSER & ROSENBAUM, P. C.
By Noel W. Hauser, a Member of the Firm
26 Court Street
Brooklyn, New York 11242
(212) 522-3300

Schedule A.

MARBURY MANAGEMENT, INC.

Schedule of Purchases and Sales of Securities
through Alfred Kohn and Wood Walker & Co.

No. of Sales	Name of Stock	Date Purchased	Purchase Price	Date Sold	Sales Price	Net Loss
500	Unexcelled, Inc.	1/20/69	$22,205.00	3/26/69	$13,312.23	$8,892.77
				TOTAL NET LOSS ON SECURITIES SOLD.....		$8,892.77
				Market Value		
1000	D.W.G. Corp.	8/27/68	$14,750.00	Presently Held	$ 3,000.00	$11,750.00
100	Responsive Environment	12/6/68	3,385.75	Presently Held	200.00	3,185.00
100	Universal Container	3/26/69	12,406.25	Presently Held	2,700.00	9,706.25
				TOTAL UNLIQUIDATED LOSS ON SECURITIES PRESENTLY HELD.....		$33,527.00

Schedule B.

HARRY BADER

Schedule of Purchases and Current Market Value of Securities purchased through Alfred Kohn and Wood Walker & Co.

No. of Sh.	Name of Stock	Date Purchased	Purchase Price	Mkt. Value	Loss
500	Responsive Environments	12/13/68	$16,928.75	$200.00	$16,728.75
100	Captial Holding	12/27/68	687.50	00.00	687.50
500	Commuter Airlines	9/27/68	6,312.50	00.00	6,312.50
200	Stranrock Uranium	1/6/69	973.50	60.00	913.50
					$24,642.50

Schedule C.

HARVEY JAFFE

Schedule of Purchases and Sales, and Current Value of Securities sold through Alfred Kohn and Wood Walker & Co.

No. of Sh.	Name of Stock	Date Purchased	Purchase Price	Date Sold	Sales Price	Net Loss
400	Commuter Airlines	7/11/68	$ 3,941.76	1/23/69	$3,917.00	$ 24.76
300	Standard Dredging	11/14/68	5,778.00	3/12/69	3,865.78	1,912.22
100	Standard Dredging	11/29/68	1,736.63	1/23/69	1,734.08	2.55
100	Respon-sive Envi-ronment	12/3/68	3,385.75	2/4/69	3,209.75	176.00
500	D.W.G. Crop.	12/10/68	5,716.25	3/13/69	3,912.50	1,803.75
300	Automatic Radio	1/7/69	7,407.07	2/6/69	7,241.10	164.97
						$4,084.25
				Market Value		Loss
100	Universal Container	2/27/69	9,215.07	Presently Held	1,425.00	7,790.07
						$11,874.32

Decision By District Judge Lee P. Gagliardi on July 19, 1977, Dismissing the Complaint against Wood, Walker & Co. (TT pp. 221a-223a).

The Court: The gravamen of the complaint is a violation of Section 10(b) of the Securities & Exchange Act and Rule 10(b)-5 as promulgated pursuant thereto.

It is undisputed that Alfred Kohn was employed by the defendant Wood, Walker & Company. I find that he was employed as a trainee and accepting the plaintiffs' facts in their most favorable light, as I must do on a motion of this kind, I think the evidence in its most favorable light to the plaintiffs is that during the course of his employment with Wood, Walker & Company the defendant Alfred Kohn did solicit business from the three plaintiffs here and made various reprsentations to each of the plaintiffs with respect to each of the issues which they purchased as set forth in Schedules A, B and C annexed to the complaint.

I further accept for the purposes merely of the motion with respect to Wood, Walker the testimony of the plaintiffs to the effect that Alfred Kohn held himself out as a registered representative or a qualified broker and that except for these representations they would not have made the purchases which they did nor would they have continued to hold the stock for as long as they indicated they held it, except, of course, with respect to the 300 shares of Standard Dredging purchased by plaintiff Harvey Jaffe.

I find that in its most favorable aspect the plaintiffs may have established negligence on the part of the defendant Wood, Walker. I find, however, that the plaintiffs have not sustained the burden of proof by a fair preponderence of the credible evidence in this respect and secondly, with respect to a violation of Section 10-B and Rule 10(b)-5, I find that the plaintiffs have failed to show any proof whatsoever which appears to be required under the decision of Ernst & Ernst and there is no evidence whatsoever in this case of any participation in behalf of defendant Wood,

Walker to manipulate with fraud or to in any way indicate that they intended to deceive their customers, particularly the three plaintiffs involved in this case.

For these reasons the complaint against the defendant Wood, Walker is dismissed without costs, and the clerk shall enter judgment in accordance with the decision herewith.